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 12 *C. R. Bard, Inc. and*  
 13 *Bard Peripheral Vascular, Inc.*

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 15 **IN THE UNITED STATES DISTRICT COURT**  
 16 **FOR THE DISTRICT OF ARIZONA**

17 IN RE: Bard IVC Filters Products Liability  
 17 Litigation

18 No. 2:15-MD-02641-DGC

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 20 **DEFENDANTS' MOTION FOR**  
 20 **LEAVE TO FILE UNDER SEAL**  
 21 **AND INCORPORATED**  
 21 **MEMORANDUM OF LAW**

22 (Assigned to the Honorable David G.  
 22 Campbell)

23 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively  
 24 "Bard") hereby respectfully move this Court, pursuant to the Stipulated Protective Order  
 25 (Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for  
 26 leave to file under seal Bard's Submission in Opposition to Plaintiffs' Proposed  
 27 Bellwether Group 1 Selections and certain accompanying Exhibits. Defendants'  
 28 Submission and Exhibits contain certain Plaintiffs' personal healthcare information that is  
 protected under HIPAA and confidential under the Stipulated Protective Order,

warranting protection from public disclosure. In addition, the Submission and one of the accompanying Exhibits contain pieces of highly competitive, confidential, proprietary information, thereby, also warranting protection from public disclosure. Accordingly, there is good cause to grant Bard's Motion for Leave to File Under Seal. Bard has conferred with Plaintiffs' counsel and confirmed that they do not oppose this Motion. However, Plaintiffs reserve the right to challenge any of the confidential designations pursuant to the Stipulated Protective Order (Doc. 269, ¶ 2) at a later time.

#### **ARGUMENT AND CITATION OF AUTHORITY**

Bard's Submission in Opposition to Plaintiffs' Proposed Bellwether Group 1 Selections and some of the accompanying Exhibits contain certain Plaintiffs' personal health care information. Portions of the Submission itself, as well as Exhibit A (Plaintiff Profile Form for Cory Behlke), Exhibit G (Excerpts from Deposition of David Henry, M.D., pertaining to Lisa Hyde), and Exhibit H (Excerpts from Deposition of William Kuo, M.D., pertaining to Lisa Hyde), discuss particular plaintiffs' respective medical histories and current medical conditions, are confidential under the terms of the Stipulated Protective Order (Doc. 269), and are also protected from public disclosure pursuant to HIPAA. Indeed, the Court has already sealed similar information in this litigation.

Similarly, portions of the Submission itself, as well as Exhibit E (Internal Chart of Bard IVC Filter Complication Rates through December, 2016) contain pieces of highly competitive, confidential, proprietary information that warrant protection under Federal Rule of Civil Procedure 26(c)(1)(G) because the documents are not made public by Bard and, if obtained by Bard's competitors, could give an unfair economic advantage to those competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL 737485, at \*5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994)). Indeed, Bard has already produced Exhibit E and designated it as "CONFIDENTIAL" pursuant to Stipulated Protective Order (Doc. 269), ¶ 6.

#### **CONCLUSION**

For all of the foregoing reasons Bard requests that the Court grant its Motion for

1 Leave to File Under Seal.

2 RESPECTFULLY SUBMITTED this 28th day of April, 2017

3 By: s/ Richard B. North, Jr.

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